

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

**CARLSON ENTERPRISES, INC.,
PLAINTIFF**

V.

**ACUITY INSURANCE COMPANY,
DEFENDANT**

CASE NO. 8:18-cv-396

COMPLAINT AND JURY DEMAND

The Plaintiff, for its claims against the defendant states:

1. The Plaintiff, Carlson Enterprises, Inc., ("Carlson") is a corporation organized under the laws of the State of Nebraska and having its principal place of business at South Sioux City, Dakota County, Nebraska.
2. The defendant, Acuity Insurance Company ("Acuity") is an insurer doing business in the State of Nebraska and having its principal place of business in the State of Wisconsin.
3. This court has jurisdiction of this matter pursuant to its diversity jurisdiction under 28 USC Section 1332(a)(1).
4. The amount in controversy exceeds \$75,000.00 exclusive of interest and costs.
5. Carlson purchased a "Commercial Package" insurance policy from Acuity with effective dates of 6-15-2017 to 6-15-2018 under policy number Z47981. The policy provided property damage coverage for a commercial building owned by Carlson and located at 929 W. 25th Street in South Sioux City, Nebraska.
6. On June 29, 2017, Carlson's commercial building sustained damage in a hail storm. The resulting damage to the roof of the structure was deemed a "Covered Loss" by Acuity and Carlson received compensation for the roof damage from Acuity. Given the extensive damage to

the roof, and the number of damaged structures in South Sioux City, it was several months before repairs were completed.

7. The hail storm of June 29, 2017 caused additional damage to Carlson's building. During the storm the electrical breaker for the sump pump located in the basement tripped causing the sump pump to be without power and causing water to collect in the basement. Any damage caused by this occurrence would be a "Covered Loss" under the Acuity policy.

7. In early 2018, Carlson discovered substantial mold infestation on interior surfaces of the building including the basement, interior walls, and areas above the false ceiling. Carlson notified Acuity of this additional damage from the hail storm of June 29, 2017.

8. Carlson has had the mold damage investigated by a mold remediation company and has been advised that the roof damage caused by the hail storm and the basement water caused by the hail storm were causes of the mold damage to the building interior.

9. Acuity has denied coverage for the interior mold damage claiming the damage was not the result of a "Covered Loss" under the policy.

10. In denying coverage for the mold damage, Acuity has breached its insurance contract with Carlson and said breach is a proximate cause of damage to Carlson.

11. Carlson's policy with Acuity has a \$250,000.00 coverage limit for this property damage. Carlson's costs for repair of the interior mold damage exceed this amount.

12. Carlson has made demand on Acuity for the policy limit of \$250,000.00 for Carlson's property damage. Acuity has failed and refused to pay Carlson any amount for said damage.

13. Pursuant to Section 44-359 of the Nebraska Revised Statutes, Carlson shall be awarded his reasonable attorney fees in addition to his actual damages should he prevail in this action.

WHEREFORE, the Plaintiff prays for money judgment against defendant, Acuity Insurance Company, in the amount of \$250,000.00, plus interest as allowed by law and the costs of this action. Plaintiff further prays for an award of its reasonable attorney fees pursuant to Section 44-359 of the Nebraska Revised Statutes..

JURY DEMAND

The Plaintiff demands trial by jury on all fact issues herein.

LUNDBERG LAW FIRM PLC

/S/ PAUL D. LUNDBERG #16495
600 4TH STREET, SUITE 906
SIOUX CITY, IOWA 51101
PHONE: 712-234-3030
FAX: 712-234-3034
EMAIL: paul@lundberglawfirm.com
ATTORNEY FOR PLAINTIFF

